IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
(Case No. 13470US02)

In the Application of:	
	Henry Samueli et al.
U.S. Serial No.:	09/620,919
Filed:	July 21, 2000
For:	ETHERNET SYSTEM
Examiner:	Chi Ho A. Lee
Group Art Unit:	2416

Conf. No.:	4027
Customer No.:	23446

CERTIFICATE OF TRANSMISSION

I hereby certify that this correspondence is being transmitted via EFS-Web to the United States Patent and Trademark Office on May 11, 2009.

/Michael T. Cruz/
Michael T. Cruz
Reg. No. 44,636

PETITION TO THE DIRECTOR

URGENT

Mail Stop **Petition**
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

This paper is a Petition to the Director to correct United States Patent and Trademark Office (USPTO) errors stemming from erroneously categorizing the present application as a reissue application.

It is respectfully requested that the USPTO re-categorize the present application as an ordinary continuation application (and not as a reissue application); recalculate the

Determination of Patent Term Extension in view of re-categorizing the present application as an ordinary continuation application (instead of as a reissue application); and, if necessary, mail out a new Notice of Allowance and Fee(s) Due.

The Commissioner is hereby authorized to charge any fees associated with this petition, to charge any additional fees, to charge any fee deficiencies or to credit any overpayments to the deposit account of McAndrews, Held & Malloy, Account No. 13-0017.

It is respectfully submitted that the USPTO has erroneously classified the present application as a reissue application (i.e., a "continuation reissue application") when the present application is merely a continuation of a reissue application (i.e., the present application should not be treated as a reissue application).

In the present application, the Examiner of record ultimately agreed with Applicants that the present application is merely a "continuation of a reissue application" (i.e., the present application is not a reissue application). It is respectfully submitted that the present application is not a "continuation reissue application" (i.e., a reissue application) as set forth in M.P.E.P. § 1451.

The issue fee for the present application is due **June 11, 2009**.

It is respectfully requested that the USPTO re-categorize the present application as an ordinary continuation application (and not as a reissue application); recalculate the Determination of Patent Term Extension in view of re-categorizing the present application as an ordinary continuation application; and, if necessary, mail out a new notice of allowance and fee(s) due.

As noted above, it is respectfully submitted that the present application is not a reissue application.

It is respectfully submitted that the present application is not a "continuation reissue application" as set forth in M.P.E.P. § 1451.

It is respectfully submitted that the present application is merely an ordinary continuation application, the parent of which just happens to be a reissue application.

M.P.E.P. § 1451 makes a distinction between (1) a "continuation of a reissue application" which is treated as an ordinary continuation application and (2) a "continuation reissue application" which is treated as a reissue application.

The present application is a "continuation of a reissue application" which should be treated as an ordinary continuation application under ordinary proceedings before the USPTO.

The present application should not be treated under reissue proceedings before the USPTO.

It is respectfully submitted that M.P.E.P. § 1451 sets a higher standard if an applicant wants an application to be treated as a "continuation reissue application" (i.e., as a reissue application).

"[T]he mere fact that the application purports to be a continuation ... of a parent reissue application does not make it a reissue application itself, since it is possible to file a 35 U.S.C. 111(a) continuing application of a reissue application." M.P.E.P. § 1451.

"There must be an identification, ***on filing***, that the application is a continuation reissue application, as opposed to a continuation of a reissue application". M.P.E.P. § 1451 (emphasis added).

"Thus, the specification must be amended to state that the application is a 'continuation reissue application' of its parent reissue application." M.P.E.P. § 1451.

The present application does not state that it is a "continuation reissue application" as set forth in M.P.E.P. § 1451.

Instead, the present application states that it is a continuation of a reissue application.

The attention of the Director is respectfully directed to the Preliminary Amendment filed July 21, 2000 which states that "[t]his application is a continuation of allowed Application No. 09/252,551 filed February 18, 1999, which was a reissue of Patent No. 5,604,741 issued February 18, 1997". Preliminary Amendment filed July 21, 2000 at page 1.

Thus, it is respectfully submitted that the present application is a "continuation of a reissue application". It is not a "continuation reissue application" as set forth in M.P.E.P. § 1451.

It may be noted that a parent reissue declaration of the parent reissue application was filed in the present application.

However, the fact that the parent reissue declaration of the parent reissue application was filed in the present application is not relevant to a determination as to whether the present application is a "continuation reissue application" or a "continuation of a reissue application".

The present application is a continuation of a parent application that happens to be a reissue application. Thus, in filing the present application, Applicants merely submitted the declaration of the parent application, which is standard procedure before the USPTO. The declaration of the parent application just happens to be a reissue declaration.

The fact that the parent application happens to be a reissue application and the fact that the declaration of the parent application happens to be a reissue declaration have no bearing on determining whether the present application is a "continuation reissue application" or a "continuation of a reissue application" since, in either case, Applicants are merely filing the declaration of the parent application, which, in this case, just happens to be a reissue declaration of a parent reissue application.

In summary, Applicants clearly stated that the present application is a continuation of a reissue application in the Preliminary Amendment filed with the present application. Applicants

did not state with the filing of the present application that the present application is a "continuation reissue application" as required by M.P.E.P. § 1451. Finally, the fact that Applicants submitted the declaration of the parent application which happened to be a reissue declaration of the parent reissue application carries no weight in determining whether the present application is a "continuation of a reissue application" or a "continuation reissue application". Applicants were merely filing the declaration of the parent application, which just happens to be a reissue declaration, as is typical of general continuation practice before the USPTO.

For at least the above reasons, it is respectfully requested that the USPTO re-categorize the present application as an ordinary continuation application (and not as a reissue application); recalculate the Determination of Patent Term Extension in view of re-categorizing the present application as an ordinary continuation application; and, if necessary, mail out a new notice of allowance and fee(s) due.

The Commissioner is hereby authorized to charge any fees associated with this petition, to charge any additional fees, to charge any fee deficiencies or to credit any overpayments to the deposit account of McAndrews, Held & Malloy, Account No. 13-0017.

Date: May 11, 2009

Respectfully submitted,
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